Supreme Court, U.S.
FILED

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~~M.C. No. 1292~~

IN THE

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

DONALD L. SUMMER

On Petition for Writ Of Certiorari
To the State of New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Pepi Schafler, BA, MSSS, JD, PHD
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743
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29 pp

QUESTIONS PRESENTED FOR REVIEW

1. Shouldn't upward modification of long term or lifetime spousal maintenance awards be automatically indexed to the CPI as recognition that the purchasing power of a long ago award if not upwardly modified is downwardly modified through the passage of time which erodes the purchasing power of same?

2. Was Petitioner denied her Constitutional rights to equal protection and substantive due process as guaranteed by the Fourteenth Amendment, in the matter at instant?

3. Did the State of New York Court of Appeals discriminate against petitioner , by refusing to consider this appeal, despite the Court's affirming the entitlement to a life style , whose costs increase daily, monthly and annually?

4. Is that institutionalized hypocrisy by the Court of Appeals?

5. If not the State of New York Court of Appeals -that who should address this outrageous display of bias and neglect?

6. Did the lower court show bias against Petitioner?

7. Is this not an especially disturbing attitude since an upward modification is called "new law", yet the downward modification caused by the erosion in purchasing power is acceptable?

8.Doesn't the requiring of "a budget for the court's examination" represent an odious return to a patriarchal structure , and the lower court's expectation of doing "social work"?

9.Doesnt this request represent an impermissible double standard , by asking a female only "for a budget"?

10. Does this not represent a return-an ugly one at that- to what can only be described as "the tin cup doctrine" where women had to beg to be awarded even minimal marital economic sustenance?

11. While the state courts are advancing to a business model of marital economic dissolutions, do the actions in this matter not take us back to the "bad old days"?

12. Shouldn't the only impediment to an upward modification of a maintenance award, designated to help maintain the marital lifestyle , be the inability by payor as proven by the payor's financial records and budget?

13. Is it the function of the lower court to advocate on behalf of the payor, protecting his assets , even though there was no issue of an inability to provide an increased maintenance award raised by him?

14. Did the institutionalized sexism prevent the New York State Courts to properly respond to Petitioner's motion for relief?

15. Since the lower court is aware of the increases in the cost of living, a given that the court can not change , can there be another reason other than degradation for seeking "the budget"?

16. What part of Petitioner's entitlement to maintain the marital standard of living ordered by the state courts in 1989, affirmed as lifetime by the Court of Appeals in June 1995, whose cost's have increased annually therefore the supplemental maintenance award of years ago has decreased in purchasing power, and must be upwardly modified, is so incomprehensible to the courts?

Rule 29.6 Corporate Disclosure Statement

Petitioner hereby declares that there are no Corporate interest involved in this matter.

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New York Court of Appeals Order Re Maintenance
June 13, 1995

Consumer Price Index Information
State of California Department of Industrial Relations
Division of labor Statistics and Research
February 2002

State of New York, Supreme Court Buffalo NY
Judge Donna M. Siwek Order
May 13, 2002

New York State Court of Appeals
order denying Appeal
November 19, 2002

New York State Court of Appeals
order rehearing denied
February 13, 2003

Jurisdiction of this Court on Writ of Certiorari

Article III Section 2, of the United States Constitution vest the Supreme Court with the Judicial Power and Jurisdiction to all Cases and Controversies in law and equity, and Appellate jurisdiction to same. Pursuant to 28 USCA # 1257 this Court has jurisdiction to review any final judgment or decree rendered by the highest court of a State in which a decision could be had, and may do so among other as follows: By writ of certiorari, where the validity of a treaty or statute of the United States, is drawn in question or where the validity of a State statute is drawn in question on the ground of it being repugnant to the Constitution , treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution , treaties or statutes of , or commission held authority exercised under, the United States. Pursuant to 28 USCA # 1651 (a) The Supreme Court and all courts established by an Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Procedural posture of the case.

The Motion at issue was denied by the New York State Supreme Court , County of Erie on May 13, 2002. Appealed to the Appellate Division and the New York Court of Appeals. The Court of Appeals denied on November 19, 2002, Petitioner sought reconsideration by the full Court, which denied on February 13, 2003.

CIVIL MATTER -INTRODUCTION TO ISSUE INVOLVED.

THIS MIGHT BE A CASE OF FIRST IMPRESSION, QUESTIONING THE EQUAL RIGHTS ENTITLEMENT OF WOMEN AS PER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN MATTERS OF LONG TERM OR LIFETIME MAINTENANCE AWARDS.

Petitioner is the recipient of a lifetime supplemental spousal maintenance award pursuant to a qualified order by the New York State, County of Erie Supreme Court dated March 17, 1993. Said entitlement formalized a pendente lite award dated October 1989.The State of New York Court of Appeals in a Memorandum Decision dated June 13, 1995 affirmed same, articulating Petitioner's entitlement to maintain the marital standard of living post the termination of the marriage. In May 2002, Petitioner moved in the above noted State Court that retains jurisdiction, for an upward modification of this lifetime supplemental spousal maintenance award whose purchasing power had greatly diminished over the years. To avoid the subjective invocations of "how much does gasoline cost " or postage stamps, Petitioner sought an objective standard for same: the Consumer Price Index Calculation tables as provided by the California Department of Industrial Relations Research and Analysis Bureau. These tables are used by government agencies and private industry. At a hearing on Petitioner's Motion, the Court declined and said " I have heard of the CPI index used in labor and pension cases, in other employment, but never in spousal maintenance." For an upward modification, petitioner would need to provide "her budget" for examination, said he did not want to create "new law" and denied the request. This was discriminatory approach by the lower court, and the propagation of a "social work"

approach to this matter. It is the degrading "tin cup doctrine" of begging that has traditionally been the approach to women in these circumstances seeking relief from the court.
The lower Court further signaled it's stand by saying to Petitioner who had left Buffalo New York as soon as she was free to do so: " you live in the high rent district " a euphemism for a much more expensive part of the country, where Petitioner resides: the San Francisco Bay area.
The lower court denied , and Petitioner sought Appellate relief. That was denied. Petitioner believes that this is a gross violation of the equal protection and due process clause, blatant sexual discrimination , a reversion by the lower court to long discarded judicial paternalism : "instead of equal rights, let us teach them how to make do with less" social work practices employed by the judiciary to discriminate against women, to degrade and deprecate their equal rights, an attitude of "protectionism for the payer of the maintenance "usually male," (in some states women are payers of spousal maintenance like in California) because he is one of us. The lower court was not interested in the payer of the maintenance's- the "male's budget". The lower court advocated on his behalf, not exactly equality before that court. Since the lower court has no ability to change the cost of living, i.e. the cost of a gallon of gasoline from $2.50 to $ 1.00 for example- the court might -based on the discriminatory conduct-however order someone to live in a place where the cost of living might be less expensive, like the coal mining towns in the hills of West Virginia, or suggest a change in life style: "do not drive". Unless this Court grants this Petition for Certiorari. Petitioner's Constitutional Rights will remain impaired forever. The State of New York Court of Appeals is the highest Court in the State, and therefore not only sets the law for the state, but also the societal moral attitudes about same.

STATEMENT OF RELEVANT FACTS

Petitioner had been a long time married, later seven year Plaintiff in an action for divorce. After a 12 day trial the divorce was granted on March 17, 1993. During the trial evidence was introduced on the parties marital standard of living as required by the laws of the State of New York. The evidence indicated that the parties resided in an elegant custom built home with suitable amenities, there was a vacation home , travel abroad and within the country, furs, jewelry and fashionable clothing for petitioner, and multiple luxury automobiles. In a 50 page decision the court described a very nice middle class life. In the judgment of divorce the court awarded Petitioner a supplemental lifetime maintenance award of $2.000 which in addition to other resources including employment, would be required to maintain the marital lifestyle to which Petitioner is entitled. The $2.000 amount was really a pendente lite award which started in October 1989 , and which was now being institutionalized into permanency on March 17, 1993. The Respondent appealed to the Appellate Division of New York State Supreme Court which reduced the duration of this supplemental award to five years, and Petitioner appealed to the New York Court of Appeals. On June 13, 1995 (Appendix) the New York Court of Appeals in a memorandum decision reversed the Appellate Division and Articulated Petitioner's life time entitlement to maintain the marital lifestyle. In October 2001 , Petitioner moved for an upward modification of the lifetime supplemental maintenance award which at that point had lost about 45-50% of it's purchasing power. To avoid the subjective experiential perspective and debate on what things costs, Petitioner obtained the statistical calculations that constitute the Consumer Price Index and the rise in same over the time at issue and provided it as evidence for the devaluation of the award.

Attached to Petitioner's motion for the upward modification were the 10 pages of the CPI calculations (Appendix 2) which calculations govern all relevant government and institutional decisions on pensions, retirement plans, labor and employment contracts , social security benefits and all other wage, price and benefits increases and spending.Erie County Supreme Court judge N.Joslin was not interested in this justification for an upward modification of the award. The hearing was short-Petitioner appeared by telephone - during which he said: "he can not grant this request as he had never heard of the upward modification of an spousal maintenance award based on the rise of the CPI; he had only heard of it in labor and employment contracts; he can't create new law." He continued:" Petitioner would need to provide her budget for him to examine". And as a signal to what his thinking was on the issue he said to Petitioner: " you live in the high rent district" a euphemism for the San Francisco Bay area, and continued by saying "I don't know "and denied the motion. Petitioner did challenge him as to why women are subject to what she has labeled the "tin cup doctrine" i.e. beg , and show their budget so the court can practice "social work" , even though the CPI is something everyone knows, and we all live by it. He obviously ignored it all, and within a few weeks retired. All his cases were transferred to Judge Donna M. Siwek. Petitioner repeated her Motion to her , it was essentially a Motion to reargue , which she declined on May 13, 2002. (Appendix 3) Petitioner thereafter appealed to the New York Court of Appeals which declined on November 19, 2002 (Appendix 4) and denied rehearing on February 13 (2003) (Appendix 5).

ARGUMENT

Women and the Common Law.

Near the time that American men declared liberty, equality and consent of the governed the fundamentals of the American Revolution there arose a powerful voice for the traditional legal subordination and subjugation of women. Sir William Blackstone's Commentaries on the Laws of England (1765) were reproduced in the United States through the early part of the 20th century. Sixteen of the subscribers of the first American Edition of Blackstone were signatories of the Declaration of Independence, six were delegates to the Constitutional Convention, one- John Marshall became chief justice, another -John Adams became president of the United States. Blackstone's treatise was a primary text for students of law throughout the country. From the privileged of the first law curricula at at Harvard, and the College of William and Mary, to many more who learned the legal trade by "reading" with practicing attorneys. Blackstone's Commentaries were the only law books that traveled west with the settlers. Blackstone's Commentaries Chapter IV 1803 Edition, noted that by marriage the husband and wife are one person in law. that is the very being or legal existence of the woman is suspended during marriage. What he describes as the common law status of wives is really "civil death". She had no civil rights, no political rights, no property rights, the husband could "mildly chastise her" read beat her , take her property, take her children. However : "The husband is bound to provide his wife with necessaries by law as much as for himself." Blackstone supra.

From it's earliest the sociology of women struggled for political and social recognition, rights to education, rights to economic participation, to own and hold property, rights to emancipation, the right to ones children the right to vote. The later part of the nineteenth century, and the early 20th century saw women as having access to education, to the economic system, and many other rights which set the stage for the equal rights movement that was to come. The Fourteenth Amendment to the United States Constitution had finally become a viable instrument of entitlement for women as well. Marriage began to evolve from it's bondage status to be considered an equal partnership of choice by two persons.

Women ,Marriage and the Cult of Domesticity and Consumption

The industrial revolution of the later part of the 19th century and early 20th century, saw massive changes in society, among them the rapid development of a large middle class. Women and marriage were very much in the moment during those changes. Education was already available and accessible to women of means, and they could have entered the economic sphere. But these women were needed for other purposes. Impoverished women began to work in factories, sweatshops , were maids or nannies. The very wealthy were kept occupied and focused on the social events they were creating, but the middle class women who now lived in cities with only their nuclear families, who had maids and child care help, freeing up their time, they became consumer, shoppers, purchasing the beautiful merchandise, clothing , items to beautify their

homes. This was also the time of "scientific" childrearing. Domesticity was touted as a woman's highest calling. Married women were going to lectures to be instructed in domesticity. To avoid having a disturbed or socially unacceptable child, women had to devote themselves to that task. Also no man could succeed in the business , professional and social world of a community, who did not have a wife devoting herself to the family well being, acquired the beautiful things consistent with the family's status, and did some charity work in the community. This model of marriage and the expectation of women in marriage has persisted to the present day, and is still viable.

Women as "reservists".

Women have shared the destiny of military reservists who are "called up " in a time of need, and after the need is over are sent away. During both World War I and World War II millions of women entered the work force and were employed in a variety of settings: from munitions factories, to hospitals, to building aircraft, farming and of course some had enlisted in the women's service group as nurses and care givers, and saw battle. As soon as the wars were over , the women were dismissed from the work force because the jobs were needed for the returning servicemen .Many working women would have wished to continue. Especially after WWII, women were needed to marry create families, and become consumers. Except that in the times during and after WWII men and women had undergone significant sociological changes. The men were not the same as when they left, and neither were the women.

Divorce, Alimony, Spousal Maintenance and the Court's Entry in to the Field of Social Work

The 20th century had seen a general increase in people divorcing, but post WWI and the mid century there had been a rapid rise in the rate of divorce, and a social acceptance of same. States with more restrictive divorce laws eased them , to enable these marital partnership to be ended without 19th century restrictions. However the issue of spousal support and alimony remained in the historical past, and the courts in general, albeit New York State courts specifically entered the field of social work. The marital partnership model which had continued to be one spouse's earnings as the primary marital income, required to be distributed among both partners. Enter alimony that comes from the word alimosinary which denotes charity. Many divorcing couples agreed among themselves on issues of alimony, or spousal support. But for those that did not and turned to the courts for relief, found the courts doing social work. Social work is an adaptive and teaching discipline and the courts concluded that this is what divorcing women need. While founded on Blackstone's Commentaries that "the husband must provide for a wife as well as for himself "Blackstone's Commentaries Chapter IV, 1803 Edition, and the state laws holding that a divorcing spouse-read wife- is entitled to maintain the marital life style post divorce, nevertheless the courts in New York State set out to do social work demeaning to women. Most of the time only one party-the woman was required to provide a "budget" and thereafter it was the benevolence, bias and discretion of the court.

Some of the decisions were outrageous, shameful demeaning , represented sexual discrimination and violations of equal protections laws, as well as abuse of judicial discretion. In Glover v Glover 314 NYS 2nd 873 (1970) in which after 8 years of marriage the wife sought appropriate support consistent with the marital standard of living , the court instead ordered 4 weeks of welfare level support, because of her poor housekeeping and her interest in a career.
Joffe v Spector 279 NYS 2nd 905 (1967), represents the judicial social work run amok. A woman sought an increase in monthly alimony from $300 to $ 500 per month as she was gravely ill with a malignancy from which she later died , and her expenses were $2000 - $2500 per month. The court denied., the woman died. The Appellate Court held that the lower court abused it's discretion, but not to worry, the court in New York State retains jurisdiction even after death, therefore the estate will receive the differential in the monthly award

Some proposals on post divorce spousal maintenance
To avoid the demeaning judicial social work endeavors and the offensive and inadequate "alimony awards", there is a a body of writings that calls for "post divorce income sharing". Jana B.Singer "Divorce Reform & Gender Justice" 67 N.C.L.Rev 1103, (1989) creates a theoretically sound matrix to implement and compensate an investment by people in a marriage, by having couples continue in post divorce income sharing, depending on the length of the marriage, which would limit judicial discretion and be very easy to administer. In Spouses and Stranger's Divorce Obligation and Property Rhetoric 82 Geo L.J.2303, (1994) by Milton C. Regan he also calls for post divorce income sharing employing a business model and marketing strategy.

SUMMER v SUMMER 85 NY 2nd 1014 (1995)

The above citation is for the New York Court of Appeals decision in the present matter. The parties had been married a long time (26 years) and Petitioner had been a Plaintiff seeking to divorce for seven years. After a 12 day trial the judgment of divorce was granted on March 17, 1993. The judgment ordered a supplemental lifetime maintenance award of $2.000 per months, which was in fact the pendente lite award ordered in 1989, now made permanent. The opponent appealed .The Appellate Division of New York State Supreme Court 4th Department , citing a case Hartog v Hartog which stood for spousal maintenance be limited to 5 years, reversed the lifetime award to five years. The Hartog case had been appealed to the Court Of Appeals, and Petitioner had appealed to the same court as well. The Court of Appeals reinstated the Hartog lifetime maintenance award of $5.000 per months in June 1995. Hartog v Hartog 85 NY 2nd 36, (1995)

A few days later in a Memorandum Decision the New York Court of Appeals citing Hartog, reversed the lower Appellate Court and reinstated the lifetime supplemental maintenance award of $2.000 per month, in Summer v Summer.(Appendix 1) In the memorandum of decision the court articulated Petitioner's unequivocal entitlement to the marital standard of living which been detailed in the 50 page divorce decision: a fairly nice middle class life of an elegant custom built home with many amenities, vacation travel at home and abroad, fashionable clothing, jewelry furs, dining out, a lot of entertaining at home, and a vacation condominium.

Although this matter can be viewed as court enforcement of somewhat private agreements , it raises Constitutional issues of significance: Judicial enforcement through state court action of 14th Amendment violations.

In denying upward modification of the lifetime supplemental maintenance award, based on the rise in cost of living as evidenced by the CPI-The Consumer Price Index, the Court created a de facto remittitur. The Court also reversed it's own order awarding the purchasing power of the maintenance award, and doing so in violation of Petitioner's substantive due process and equal protection rights. In Bush v Gore 491 US 98 (2000) this Court held that there can be no excuses for a due process violation. When the Court of Appeals reversed an intermediate court , reinstated and affirmed the original award, some of this of more than a decade ago, the Court determined and asserted an entitlement to a standard of living, which would require the additional purchasing power of the lifetime maintenance award. There has been a change, a diminution of that purchasing power. This is not personal, but rather, societal. Consequently the upward modification sought did not require any de novo determination other than statistical evidence of the extent of change in purchasing power. Petitioner provided that through the information on the rise in the Consumer Price Index , State of California , Department of Industrial Relations , Division of Labor Statistics & Research. (Appendix 2)

The lower court through sexist bias and discrimination stated that it needs to see "Petitioner's budget". This is part of the court's social work endeavors. " Let us check the budget , and let us see if more effective budgeting can obviate this request. This is inapplicable, patently offensive, demeaning, uncalled for , and a vestige of 19th century attitudes about women. This is also reminiscent of some decisions based on the "tin cup doctrine" women should beg. See Joffe v Spector supra. Can the court in it's social work efforts do anything about the rise in the Consumer Price Index, i.e. the cost of living? Can anyone?

A possibly legitimate obstacle to an upward modification of the lifetime maintenance award, might be a financial downturn in Opponent's life. This should and would require an examination of his budget , his tax returns, for a court determination whether he has the ability to provide it. The marital standard of living could be impaired by economic reversals in Opponent's life whether during the marriage or post. But the lower court did not at al include the opponent in this process. Not requesting a budget, not requesting his tax returns. The court kept the opponent at arm's length from the issue. It is as if the court assured the Opponent: "do not worry , the court will protect you and your interests, and blow her away". This conduct by the lower court represents shameless bias and violations of the equal protection clause. In Orr v Orr 440 U.S. 268 (1979) this Court held that laws applicable to one gender violated the equal protection clause. In Craig v Boren 429, U.S. 190 (1976), addressing the differential treatment of men and women in the sale of alcohol, this Court held that "there is only one equal protection clause" and this is wrong.

The Consumer Price Index Evidence and New York laws.

The tables of calculations of the rise in the CPI (Appendix 2) are the ultimate evidence for the present matter, and are also the basis for many aspects of government and private sector decisions. The rise in the CPI is also recognized in New York law. "The general increase in the cost of living as verified by the Consumer price Index , justifies an upward modification of a maintenance award." Seeman v Seeman 674 NYS 2nd, 423 (1998), Shapiro v Shapiro 71 NYS 2nd 286 (1974)

The New York Court of Appeals retreated from a previous position.

The New York Court of Appeals had previously articulated Petitioner's entitlement to a standard of living which would require this supplemental maintenance award. Because of the rise in the cost of living as evidenced by the CPI that standard, -the marital standard - is now more costly to acquire. The sum of money in the maintenance award has been devalued, it's purchasing power has diminished . These are facts of common knowledge but also proven through the evidence provided. Surprisingly and shockingly the Court of Appeals appears to now have retreated from the full meaning of Petitioner's previously articulated entitlement, to the 19th century custom of denial of equal rights and the demeaning subjugation of women. If spousal maintenance awards are to be meaningful and conform to 21st century values , they need to be removed from the "through grace and favor " category, and upward modifications based on the rise in the cost of living must be removed from judicial discretion.

The New York Courts treated Petitioner unfairly, disrespectfully, with unconstitutional bias and discrimination based on gender.

Conclusion

For all of the above outlined reasons, Petitioner prays that this Honorable Court will grant this Petition for Certiorari.

May 5, 2003

Respectfully Submitted

Pepi Schafler, BA, MSSS, JD, PHD

APPENDIX

New York Court of Appeals Order Re Maintenance
June 13, 1995

Consumer Price Index Information
State of California Department of Industrial Relations
Division of labor Statistics and Research
February 2002

State of New , Supreme Court Buffalo
Judge Donna Siwek Order
May 13, 2002

New York State Court of Appeals
order denying Appeal
November 19, 2002

New York State Court of Appeals
order rehearing denied
February 13, 2003

STATE OF NEW YORK

COURT OF APPEALS

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4 No. 244 SSM29

Pepi S. Summer,
Appellant

v.

Donald L. Summer
Respondent

MEMORANDUM:

The order of the Appellate Division should be modified without costs, by reinstating that portion of Supreme Court's judgment that awarded plaintiff-wife lifetime maintenance and, as so modified, affirmed.

Chief Judge Kaye, and Judges Simons, Titone, Bellacosa, Smith, Levine and Ciparick concur.

Decided June 13, 1995

Signed Clerk of the Court

State of California
Department of Industrial Relations
Division of Labor Statistics and Research
Prevailing Wage Unit
455 Golden Gate Avenue, 8th floor San Francisco, Ca. 94102
Telephone: (415) 703-4780, Fax: (415) 703-4771

The enclosed documents are being delivered to Dr. Schafler

Dear Dr. Schafler

As you requested , please find attached tables listing the Consumer Price Index from 1993 to the present. (The present was through January 2002) . I have also included a brief explanation of the Consumer Price Index , and information on how to calculate the percent change between two values . (there are 10 pages of tables.)

Sincerely , signed Eric Bjorn, Research Analyst II

(This information is intended only for addressee)

Cumulative Change in CPI from January 1993 through January 2002.

For the whole United States : 36.8 %

For Northern California : 47.4 %

Supreme Court Chambers, State of New York
Buffalo NY, 14202-2721

Chambers of
Donna M. Siwek
Justice

Tel: 716-851-3394
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Dr. Pepi Schafler
642 Preakness Drive
Walnut Creek, Cal. 94596

Philip Abramowitz Esq
69 Delaware , Suite 1201
Buffalo NY, 14202

Re: Schafler (Summer) v Summer
Index No: H-75004

Plaintiff served the instant motion entitled "Motion for Upward Modification of Plaintiff's Lifetime Maintenance Award by Adjusting same to the Increase in the cost of living as reflected in the Consumer Price Index". After reviewing the papers in the prior proceedings , it is this Court's impression that this is a motion to reargue. We have on file an Order issue by by Judge Joslin , granted November 19, 2001 which denies the very same motion in all respects. The Court has had an opportunity to review the colloquy that Judge Joslin had on the record with the litigants at ther same time he made his decision. Plaintiff comes forward with no law which would indicate that Judge Joslin 's decision misparehended the case law. Dr. Schafler's right to appeal has been preserved and we deny the motion to reargue.

Granted May 13, 2002

s/ Donna M.Siwek
New York State Supreme Court Justice.

STATE OF NEW YORK, COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the city of Albany on the 19th day of November, 2002.

Present, Hon. Judith S. Kaye , Chief Judge Presiding

SCt Mo. No: 984
Dr. Pepi Schafler (Summer),
Appellant

v

Donald L. Summer,
Respondent

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein, and papers having been submitted thereon and due deliberation having been thereupon had , it is

Ordered , that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution .

Judge Wesley took no part.

s/ Stuart M. Cohen
Clerk of the Court

STATE OF NEW YORK

COURT OF APPEALS

At a session of the Court held at Court of Appeals in the City of Albany on the thirteenth day of February , 2003

HON. JUDITH S. KAYE, Chief Judge presiding.

Mo. No 1292

Dr. Pepi Schafler (Summer)

Appellant

v

Donald L. Summer,

Respondent

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having been heretof ore made upon the part of the appellant herein, papers having been submitted thereon, and due deliberation having been thereupon had, it is

Ordered , that the said motion be and the same is denied.

Judge Wesley took no part.

Signed,

Stuart M. Cohen

Clerk of the Court.